



February 2007

IMPORTANT INFORMATION

Debt Transfer Provisions

To refer, or not to refer.... now that is an interesting question!

All of us are only too aware of the repercussions of the Government's decision to effectively abolish Managed Service Companies (MSC's) from this April. However the latest follow-up consultation document, which was published a couple of weeks ago by The Treasury/HMRC, is even more contentious and potentially damaging to all those involved in the business of recruiting contractors and administering their financial affairs.

The document, entitled *Managed Service Companies – Transfer of Pay as you Earn and National Insurance Contributions Debts* - states in language that is quite unequivocal, that the Government intends to introduce specific legislation to allow the PAYE and NIC's debts of MSC's to be transferred to appropriate third parties.

In our view, this proposed legislation sets a unique and dangerous precedent in tax law in that, for the first time, a third party, however innocent, can be made liable for someone else's unpaid tax and NI debts, if a connection can be established and benefit can be demonstrated from the relationship.

The consultation document states that certain parties will always be clearly and directly liable for the MSC, and thus automatically within the scope of the Debt Transfer Provisions. These parties include the scheme provider and its directors and office holders or associates of the MSC. However, it does concede that for other third parties, the scope of the Provisions are limited and not intended to include anyone who didn't know, or could not reasonably be expected to know, that they were dealing with an MSC.

Understandably, some agencies have become so concerned about their vulnerability under the proposed legislation that they have temporarily stopped referring their clients to any solutions provider, particularly as the document states that the test to be applied is whether the person has 'encouraged, facilitated or otherwise been involved in the provision by the MSC of the services of the relevant individual'. In our view this could be a potentially dangerous over-reaction to the impending situation and careful thought given to such a policy. What of the risk of allowing unscrupulous operators into what has until now been a fairly controlled market?

We would like to emphasise that the document also states that it has taken into account 'early comments from stakeholders', and that as a result, the draft legislation specifically excludes those, such as accountants or lawyers, giving professional advice to their clients. Please note that JSA is regulated by the Institute of Chartered Accountants in England & Wales and owned and run by qualified chartered accountants. Despite offering "Managed Services" as one of our range of accounting solutions in the past, from April 2007 we shall be reverting to our traditional role of "UK's premier Contractor's Accountant". Thus, with no "Managed Service" on offer, the proposed legislation will not apply to our services. For clarity, JSA will NOT be signatories to our client's bank accounts, nor will we manage their invoicing/cash collection routines (other than providing on-line facilities for them to do so themselves). We will provide only traditional accounting services to our Limited Company

clients, albeit it in a highly systemised and easy to use fashion.

We have built a first-class reputation over many years by developing a bond of trust between JSA, agencies such as yourselves and our contractors. We hope that our relationship with you will remain on a firm footing, despite the best efforts of The Treasury to paint a largely false picture of armies of predatory managed service companies performing tax evasion on a massive scale, aided and abetted by virtually anyone with whom they have had some form of contact! We are not suggesting that such organisations do not exist - far from it. JSA welcomes all attempts to drive such illegal practices out of our industry. But consideration should be given to continuing a relationship with a profession accountant who will ensure (as best as we will be permitted to) that your contractor is fully compliant and well looked after.

Finally, our understanding and 3rd party advice is that the impending MSC legislation & debt transfer provisions will NOT encompass Umbrella services companies and so JSA's "WorkWise" Umbrella solution will continue post April for those contractors who are not suitable for a personal limited company (low rate, short term, caught by IR35 etc).

We look forward to continuing our association with you.

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